

1 SB55
2 75903-2
3 By Senator Dixon (N & P)
4 RFD: Local Legislation No. 1
5 First Read: 19-JUL-05

ACT No. 2005-290

SB55

With Notice and Proof

ENROLLED, An Act,

To amend Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of Act 756 of the 1975 Special Session (Acts 1975, p. 1528), as amended, to provide further for the Employees' Retirement System of the City of Montgomery by changing the retirement age and creditable service requirements and formula for benefits for certain employees who become members of the system on or after October 1, 2005; to provide for an option for existing members on October 1, 2005, to either continue under the present system or begin participation under a new plan; to provide further for the administration of the system by increasing the membership of the Board of Trustees of the system; to redefine certain terms; and to provide further for certain creditable service and benefits under the system.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of Act 756 of the 1975 Special Session (Acts 1975, p. 1528), as amended, are amended to read as follows:

"Section 1. Definitions. The following words and phrases as used in this act, unless a different meaning is plainly required by the context, shall have the following meanings:

"(1) "System" shall mean the Employees' Retirement System of the City of Montgomery, as defined in Section 2 of this act.

"(2) "City" shall mean the City of Montgomery, Alabama, with respect to its employees, and any board or boards of the city now existing or hereafter created and duly authorized by the council to participate in the system with respect to its employees.

"(3) "Council" shall mean the duly elected Council Members of the City (hereinafter sometimes referred to as Councilors).

"(4) "Board" shall mean the board of trustees of the system provided for in Section 5(B) of this act to administer the system, but shall not include the investment trustee.

"(5) "Medical Board" shall mean the board of physicians provided for in Section 5(D) of this act.

"(6) "Employee" shall mean any regular and permanent officer or employee of the city, whether full time or part time, including elected or appointed officials, the Mayor and councilors, and the regular employees of any board or commission, and any person or persons employed by the city and

1 performing the duties of a regular employee in the service of
2 the city, but shall not include anyone who is paid on a fee or
3 commission basis.

4 "(7) "Member" shall mean any person included in the
5 membership of the system as provided in Section 3 of this act.

6 "(8) "Service" shall mean service in the employment
7 of and paid for by the city.

8 "(9) "Membership service" shall mean service as a
9 member for which credit is allowable as provided in Section 4,
10 subsection (1) of this act.

11 "(10) "Creditable service" shall mean total
12 membership service plus any prior service allowed under this
13 act.

14 "(11) "Retirement allowance" shall mean annual
15 payments, payable in monthly installments, continuing to the
16 last payment prior to death.

17 "(12) "Beneficiary" shall mean any person in receipt
18 of a retirement allowance or other benefit as provided by the
19 system.

20 "(13) "Accumulated contributions" shall mean the sum
21 of the balance to a member's credit in the annuity savings
22 account as of December 31, 1968, plus all the amounts deducted
23 thereafter from his compensation and credited to his
24 individual account.

"(14) "Earnable compensation" shall mean the full rate of compensation that would be payable to a member if he worked the full normal working time. Earnable compensation shall not include overtime pay. In cases where compensation includes maintenance, the board shall fix the value of the part of compensation not paid in money. Compensation in excess of \$200,000.00 shall be disregarded for all purposes under this act. Such amount shall be adjusted at the same time and in such manner as permitted under Section 415(d) of the Internal Revenue Code.

"(15) "Average final compensation" shall mean the earnable compensation of a member during the highest 12 consecutive months of the 5-year period immediately preceding his retirement date. If at any time prior to or during the 5-year period immediately preceding his retirement date, a member served in a part-time capacity, average final compensation, creditable service, and the retirement allowance shall be determined in accordance with the rules and regulations adopted by the board.

"(16) "Equivalent actuarial value" shall mean equal value when computed at regular interest on the basis of the tables last adopted by the board.

"(17) "Operative date" shall mean the date the system began operation as provided in Section 2 of this act.

"(18) "Investment Trustee" shall mean each of such banks or other recognized advisory service or services that the board of trustees selects. Each investment trustee shall have the powers and duties prescribed by Section 5(A). The board of trustees may terminate the services of any investment trustee upon thirty (30) days' written notice to such trustee, and each trustee may likewise terminate its services upon thirty (30) days' written notice to the board. After receipt of such notice by either party the investment trustee concerned shall make an accounting within forty-five (45) days of the receipt of said notice.

"(19) The masculine pronoun shall include the feminine pronoun.

"Section 2. Name and Operative Date.

"The board shall be responsible for the management of the system for the purpose of providing retirement allowances and other benefits under the provisions of this act for employees of the city. The system shall be a continuation of the retirement system established under Ordinance No. 16-59, as amended prior to the effective date of this act, as the Employees' Retirement System of the City of Montgomery, under which name all of its business shall continue to be transacted, all of its funds shall continue to be invested, all warrants for money shall continue to be drawn and all payments made, and all of its cash and securities and other

1 property shall continue to be held as hereinafter provided.

2 The operative date of the system shall continue to be the
3 first day of June, 1959.

4 "Section 3. Membership.

5 "(1) Any person who is a member of the system at the
6 time of the adoption of this act shall be a member of the
7 system and in addition any person becoming an employee
8 thereafter shall become a member of the system as a condition
9 of his employment. Any employee who is elected as a member of
10 the council and who is a member of the system at the time of
11 such election may elect to terminate his membership in the
12 system at the time of his election by filing with the board on
13 a form prescribed by the board a notice of his election to
14 terminate his membership in the system, and a duly executed
15 waive of all prospective benefits which would otherwise inure
16 to him as a member, such notice to be filed not later than the
17 day on which he assumes his duties as a member of the city
18 council. Any person who is elected as a member of the city
19 council and who is not a member at the time of his election
20 shall become a member unless he elects in the manner set forth
21 above not to become a member.

22 "(2) Any employee whose membership in the system is
23 contingent on his own election and who elects not to become a
24 member may thereafter apply for and be admitted to membership.

"(3) It shall be the duty of the city's Finance Department, and the corresponding departments of the city's Water Works and Sanitary Sewer Board and Airport Authority, to submit to the board a statement showing the name, title, compensation, duties, date of birth and length of service of each member, and such information regarding other employees as the board may require, and on the basis thereof the board shall classify each member in one of the following groups:

"Group I. General municipal employees.

"Group I-A Airport Employees.

"Group II. Members of the Fire Department and the Police Department of the city, trained in firefighting or police work and actively engaged in such work or subject to call for such services.

"Group III. Employees of the City Water Works and of the Sanitary Sewer Board.

"Upon written request, the board shall certify to the member the group in which he is placed and the date of his admission to membership therein. When the duties of a member so require, the board may classify him in another group and shall certify to him the group to which he has been reclassified, except that no member having 15 or more years of service in one class may be so reclassified.

"(4) Should any member be absent from service more than five consecutive years, or should he withdraw his

1 accumulated contributions or die or retire under the provision
2 of this act, he shall thereupon cease to be a member.

3 "Section 4. Service Creditable.

4 "(1) Each member shall receive membership service
5 credit for all service rendered while a member of the system
6 since he became a member, or since he last became a member in
7 the event of a break in his membership, on account of which
8 contributions are made by the member.

9 "(2) Each member claiming prior service credit shall
10 file a detailed statement of all service rendered by him prior
11 to such date for which he is eligible to claim prior service
12 credit, and of such other facts as the board may require for
13 the proper operation of the system. The board shall fix and
14 determine by appropriate rules and regulations how much
15 service, if any, in any year is equivalent to a year of
16 service, but in no case shall more than one year of service be
17 creditable for all service in one calendar year, nor shall the
18 board allow credit as service for any period of more than one
19 month's duration during which the employee was absent without
20 pay. The board shall verify, as soon as practicable after the
21 filing of such statements of service, the service therein
22 claimed. Except as expressly limited herein, a member claiming
23 prior service credit must claim all eligible prior service.

24 "(3) Creditable service at retirement on which the
25 retirement allowance of a member shall be based shall consist

1 of his total membership service plus any prior service
2 verified by the board pursuant to subsection (2) above.

3 "(4) Anything in this act to the contrary
4 notwithstanding, credit for any period of absence due to
5 compulsory service in the armed forces of the United States
6 shall be allowed as service credit as if such service had been
7 service as an employee of the city, provided the employee
8 returns to city service within ninety days after becoming
9 entitled to an honorable discharge from the armed forces or
10 within ninety days after hospitalization continuing after
11 discharge for a period of not more than one year; and,
12 provided further that the employee contributes and pays to the
13 system a sum equal to the total contribution which he would
14 have made had he remained in service during such leave less
15 any amount actually contributed by the member for such period,
16 as determined in accordance with rules and regulations adopted
17 by the board. Anything herein to the contrary notwithstanding,
18 credit for military leave shall be granted in compliance with
19 all applicable federal laws, rules and regulations.

20 "(5) Notwithstanding any other provisions of this
21 act, an active and contributing member with prior employment
22 with the State of Alabama as a state employee or as an
23 employee of the public education system under the State Board
24 of Education or an institution of higher education may
25 purchase up to four years of credible service in the system

1 for the prior employment with the State of Alabama if the
2 member claiming the prior employment credit has at least 10
3 years of contributing membership service credit, exclusive of
4 military service credit, in the system and the member pays to
5 the system prior to his date of retirement from active service
6 a sum, for each year or partial year of service purchased,
7 equal to the total contribution which he and the city would
8 have made during the period for which he is claiming credit.
9 The total contribution will be based on the annual income of
10 the member at the time of payment and the city's actuarial
11 rate at the time of payment. A member is prohibited from
12 purchasing credit under the aforementioned provisions for any
13 prior service for which he or she has received credit toward a
14 benefit from any other public retirement system except the
15 federal Social Security program. The member has the
16 responsibility of providing a statement from the Retirement
17 Systems of Alabama that the member is not eligible for any
18 state retirement benefits for the prior employment for which
19 he or she is purchasing service credit and for wage statements
20 covering the time period of the service credit being
21 purchased.

22 "(6) Any employee whose membership in the system was
23 contingent upon his own election and who elected not to become
24 a member, may apply for and be admitted to membership with all
25 prior service credit at any time, provided said employee pays

1 to the system a sum equal to the total contributions which he
2 would have made as a member during his prior service.

3 "(7) Any member of the system, who at one time
4 worked as a nonmember may receive credit for prior service and
5 for the years worked as a nonmember, provided said member pays
6 to the system, a sum equal to the total contributions which he
7 would have made as a member during his prior service.

8 "(8) Any member who ceased to be a member as a
9 result of being absent from service for more than five
10 consecutive years or as a result of withdrawing his
11 accumulated contributions and thereafter becomes a
12 contributing member shall be allowed credit for such previous
13 service, provided he pays the system a sum equal to the total
14 contribution he has withdrawn.

15 "(9) Any law or part of law relating to the payment
16 of interest on contributions as a prerequisite to the granting
17 of credit for prior service under the system notwithstanding,
18 any eligible employee, member or retired member who claims
19 such prior service (including prior service claimed under
20 subsections (6), (7), and (8) but excluding prior service
21 claimed under subsections (4) and (5)) shall pay into the
22 system in addition to the contributions required, interest of
23 eight percent, compounded annually, on such contributions, as
24 a prerequisite to the granting of said service credit.

1 Interest shall be calculated in accordance with the rules and
2 regulations established by the board.

3 "(10) Anything in this act to the contrary
4 notwithstanding, the employer cost for the granting of any
5 service credit granted under the provisions of this act shall
6 become the continuing liability of the employer for whom such
7 service was rendered.

8 "Section 5. Administration.

9 "A. Investment Trustee.

10 "Each investment trustee shall be a state or
11 federally chartered bank with not less than \$500,000,000 in
12 assets, bonded for not less than the amount of the board's
13 assets held from time to time, and shall have the following
14 powers and duties (but no other):

15 "(1) To retain inventoried assets delivered to it by
16 the board so long as such retention appears advisable,
17 including the right to retain investments previously made in
18 its stock, if any, by the board.

19 "(2) To sell, exchange, assign, transfer and convey
20 any security or property, real or personal (whether in the
21 original inventory or acquired by purchase or otherwise), at
22 public or private sale, at such time and price and upon such
23 terms and conditions (including credit) as it may determine.

24 "(3) To invest and reinvest in such stocks, bonds,
25 and other securities and properties as it may deem advisable,

1 including preferred stocks, common stocks, debentures, and
2 unsecured obligations, undivided interests, interests in
3 investment trusts, mutual funds, legal and discretionary
4 common trust funds, and leases and property either inside or
5 outside of Alabama.

6 "(4) To register and carry any property in its own
7 name or in the name of its nominee or to hold it unregistered
8 but without thereby increasing or decreasing its liability as
9 fiduciary.

10 "(5) To vote in person or by proxy any stock or
11 securities held and to grant such proxies and powers of
12 attorney to such person or persons as it may deem proper. The
13 board shall have the power to vote in person or by proxy any
14 stock in each investment trustee.

15 "(6) To consent to and participate in any plan for
16 the liquidation, reorganization, consolidation or merger of
17 any corporation, any stock or security of which is held.

18 "(7) To receive reasonable compensation for its
19 services either out of the fund administered by each
20 investment trustee or from the board, the amount or method of
21 computation and payment to be agreed upon between the board
22 and each investment trustee.

23 "(8) To receive funds or appropriations from the
24 board or from the city to be held and administered hereunder,

1 and to have custody of all investments delivered to it,
2 subject to the directions of the board.

3 "(9) To pay to the board on duly-authorized vouchers
4 such funds as may be required to make current monthly payments
5 of retirement allowances and expenses.

6 "(10) To invest and manage all assets delivered to
7 the trustee by the board and/or city in a professional and
8 prudent manner and exercising due care.

9 "The powers and duties of each investment trustee
10 shall apply from and after its selection by the board and
11 delivery of assets to it, and no investment trustee shall have
12 any duties in reference to or any liabilities for any acts or
13 failures to act which occurred prior thereto.

14 "B. Board of Trustees.

15 "(1) Except for the powers and duties prescribed for
16 the investment trustee, the general administration and the
17 responsibility for the proper operation of the system and for
18 making effective the provisions of this act are hereby vested
19 in the board of trustees of the system.

20 "(2) The board shall consist of nine voting trustees
21 as follows: one shall be a member employee in the Police
22 Department, one shall be an employee of the Water Works and
23 Sanitary Sewer Board appointed by the city council from a list
24 of three nominees submitted by the Water Works and Sanitary
25 Sewer Board, one shall be a member employee in the Fire

1 Department, one shall be a member employee classified as a
2 general municipal employee, two may be either active or
3 retired members of the retirement system, one shall be a
4 retired member of the retirement system, and two may or may
5 not be members of the system. All previously appointed
6 trustees serving on October 1, 2005, shall continue to serve
7 until the expiration of their then respective current terms,
8 and thereafter their successors shall be appointed for
9 four-year terms, except that the immediate successors to those
10 previously appointed trustees who are serving two-year terms,
11 shall be appointed for and serve for terms of three years
12 each; and, thereafter, the terms of office of all subsequent
13 trustees so appointed shall be four years.

14 "(3) If a vacancy occurs in the office of a trustee,
15 the vacancy shall be filled for the unexpired term in the same
16 manner as the office was previously filled.

17 "(4) The trustees as such shall serve without
18 compensation.

19 "(5) Each trustee shall, within ten days after his
20 appointment, take an oath of office.

21 "(6) Each trustee shall be entitled to one vote.
22 Seven trustees shall constitute a quorum and a vote of a
23 majority of the trustees present at the meeting where a quorum
24 is present shall be the act of the board.

"(7) Subject to the limitations of this act, the board shall, from time to time, establish rules and regulations for the administration of the system and for the transaction of its business, including uniform standards for determining who are employees within the meaning of this act.

"(8) The board shall elect from its membership a chairman and a vice chairman, and shall appoint a secretary who may or may not be a member of the board. The board may employ personnel for secretarial and other service as shall be required.

"(9) The board shall keep in convenient form such data as shall be necessary for actuarial valuation of the system and for checking the experience of the system.

"(10) The board shall keep a record of all of its proceedings, which shall be open to public inspection. It shall submit to the council, annually, a report showing the fiscal transactions of the system for the preceding year, the amount of the accumulated cash and securities of the system, and the last balance sheet indicating the financial condition of the system as shown by an actuarial valuation of the assets and liabilities of the system.

"C. Legal Adviser

"The City Attorney, or his designee, shall be the legal adviser of the board.

"D. Medical Board

1 "The board shall designate a Medical Board of one,
2 two or three physicians who are not eligible to participate in
3 the system. The Medical Board shall arrange for and pass upon
4 all medical examinations required under the provisions of this
5 act, shall investigate all essential statements and
6 certificates by or on behalf of a member in connection with
7 application for disability retirement, and shall report in
8 writing to the board its conclusions and recommendations upon
9 all the matters referred to it

10 "E. Duties of Actuary

11 "(1) The board shall designate an actuary who shall
12 be the technical adviser of the board on matters regarding the
13 operation of the system and who shall perform such other
14 duties as are required in connection therewith.

15 "(2) The board shall certify from time to time the
16 rates of contribution payable by the city and any other
17 participating employers under the provisions of this act, and
18 shall adopt for the system from time to time such mortality,
19 service and other tables as shall be deemed necessary, and on
20 the basis of such tables and the interest rate adopted by the
21 board for the purpose of determining the city's and other
22 participating employers' contributions to the system, the
23 actuary shall make annually an actuarial valuation of the
24 assets and liabilities of the system. At least once in each
25 five-year period the board shall cause an actuarial

1 investigation to be made into the mortality, service and
2 compensation experience of the members and beneficiaries of
3 the system.

4 "Section 6. Benefits

5 "(1) Service Retirement Allowance.

6 "(a) The minimum service retirement age shall be as
7 follows:

8 "(i) For a member in Group I, I-A, or III who
9 becomes a member of the system prior to October 1, 2005, and
10 does not elect to participate prospectively as if he became a
11 member on or after October 1, 2005, the age at which he
12 completes 20 years of creditable service or age 65, whichever
13 occurs first.

14 "(ii) For a member in Group II who becomes a member
15 of the system prior to October 1, 2005, and does not elect to
16 participate prospectively as if he became a member on or after
17 October 1, 2005, the age at which he completes 20 years of
18 creditable service or age 62, whichever occurs first.

19 "(iii) For a member in Group I, I-A, or III who
20 becomes a member of the system on or after October 1, 2005, or
21 elects to participate prospectively as if he became a member
22 on or after October 1, 2005, the age at which he completes 25
23 years of creditable service or age 62, whichever occurs first.

24 "(iv) For a member in Group II who becomes a member
25 of the system on or after October 1, 2005, or elects to

1 participate prospectively as if he became a member on or after
2 October 1, 2005, the age at which he completes 25 years of
3 creditable service or age 55, whichever occurs first.

4 "Any member in service who has attained his minimum
5 service retirement age shall be retired by the board on a
6 service retirement allowance upon his written application
7 setting forth at what time not less than thirty nor more than
8 60 days next following the execution and filing thereof, he
9 desires to be retired, notwithstanding that during such period
10 of notification he may have separated from service. Such
11 member shall be entitled to such retirement allowance whether
12 he voluntarily separates from service or is dismissed for
13 cause or for any other reason. In the event such member is
14 dismissed for cause or for any other reason, he shall be
15 entitled to make application for and receive the retirement
16 allowance hereinabove provided for upon his giving the written
17 notice herein mentioned.

18 "(b) Any member in service in Groups I, I-A, or III
19 who has attained age seventy-two shall be retired forthwith by
20 the board on a service retirement allowance; provided that
21 upon the request of his department head, approved by the
22 council and the board a member who has attained age
23 seventy-two may be permitted to continue in active service for
24 a period of one year as the result of each such request.
25 However, in no event shall any member be continued in active

1 service after he has attained age seventy-five, except that
2 the compulsory retirement age shall not be applicable to an
3 official elected by vote of the people or to non-merit system
4 employees. Notwithstanding an extension of a member's service
5 after he has attained age seventy-two, such a member shall be
6 retired by the board on a service retirement allowance upon
7 his written application setting forth at what time not less
8 than thirty nor more than 60 days next following the execution
9 and filing thereof he desires to be retired.

10 "(c) Any member in service in Group II who has
11 attained age sixty-two shall be retired forthwith by the
12 boards on a service retirement allowance; provided that upon
13 the request of his department head, approved by the council
14 and the board, a member who has attained age sixty-two may be
15 permitted to continue in active service for a period of one
16 year as the result of each such request. However, in no event
17 shall any member be continued in active service after he has
18 attained age sixty-five, except that the compulsory retirement
19 age shall not be applicable to an official elected by vote of
20 the people. Notwithstanding an extension of a member's service
21 after he has attained age sixty-two, such a member shall be
22 retired by the board on a service retirement allowance upon
23 his written application setting forth at what time not less
24 than thirty nor more than 90 days next following the execution
25 and filing thereof he desires to be retired.

"(d) The service retirement allowance of a member in Group I, I-A, or III shall be as follows:

"(i) For a member who becomes a member of the system prior to October 1, 2005, and does not elect to participate prospectively as if he became a member on or after October 1, 2005, 2% of his average final compensation multiplied by the number of years of his creditable service not in excess of 20 plus 1% of such compensation for each year of creditable service in excess of 20 years, subject to a maximum of 60% of average final compensation.

"(ii) For a member who becomes a member of the system on or after October 1, 2005, or elects to participate prospectively as if he became a member on or after October 1, 2005, 2% of his average annual final compensation multiplied by the number of years of creditable service, subject to a maximum of 100% of average final compensation.

"(e) The service retirement allowance of a member in Group II shall be as follows:

"(i) For a member who becomes a member of the system prior to October 1, 2005, and does not elect to participate prospectively as if he became a member on or after October 1, 2005, 2 1/2% of his average final compensation multiplied by the number of years of his creditable service not in excess of 20 years plus 1% of such compensation for each year of

1 creditable service in excess of 20 years, subject to a maximum
2 of 60% of average final compensation.

3 "(ii) For a member who becomes a member of the
4 system on or after October 1, 2005, or elects to participate
5 prospectively as if he became a member on or after October 1,
6 2005, 2 1/2% of his average final compensation multiplied by
7 the number of years of creditable service, subject to a
8 maximum of 100% of average final compensation.

9 "(f) Participants who are members of the system
10 prior to October 1, 2005, shall be entitled to elect to have
11 their current service retirement allowance frozen and
12 participate prospectively in the new program offered to
13 employees who become members on or after October 1, 2005,
14 provided they have three or more years remaining until they
15 attain the mandatory retirement age for employees who become
16 members on or after October 1, 2005. Members desiring to make
17 such election must file with the board a written election on
18 forms, and pursuant to such rules and regulations, as the
19 board shall promulgate. In order for such election to be
20 effective, it must be filed with the board not later than
21 September 30, 2005, or within thirty (30) days following their
22 effective date of employment, whichever date is later. Members
23 so electing shall earn benefits prospectively for creditable
24 service completed on and after October 1, 2005, or the first
25 day of the next month following the filing of their election,

1 whichever date is later, on the same basis as employees who
2 become members on or after that date; and, for creditable
3 service completed prior to October 1, 2005, or prior to the
4 first day of the next month following the filing of their
5 election, as the case may be, such electing member shall be
6 entitled at retirement to such benefits for such creditable
7 service based on the retirement allowance formula provided for
8 employees who became members prior to October 1, 2005, and did
9 not elect to participate in the new system.

10 "(g) Any employee who became a member prior to
11 October 1, 2005, and did not elect to participate
12 prospectively in the retirement system as if he were a
13 post-October 1, 2005 employee, upon the attainment of 25 years
14 of creditable service may elect, during the three-month period
15 immediately next following the attainment of 25 years of
16 creditable service, to participate in the retirement system
17 thereafter and prospectively on the same basis as a
18 post-October 1, 2005 employee. Members desiring to so elect
19 must file with the board a written election on forms, and
20 pursuant to rules and regulations, adopted by the board, prior
21 to the expiration of the three-month period next following the
22 member's attainment of 25 years of creditable service. Members
23 who so elect shall be entitled at retirement to a retirement
24 allowance for each year of creditable service in excess of 25
25 based on the benefit formula applicable to post-October 1,

1 2005 employees. The retirement allowance for each year of the
2 initial 25 years of creditable service shall be based on the
3 benefit formula applicable to pre-October 1, 2005 employees.
4 Otherwise, an electing member shall thereafter participate in
5 the retirement system on the same basis as if the member were
6 a post-October 1, 2005 employee.

7 "(1.1) Spousal Benefit

8 "(a) If any active member, who last became a member
9 prior to October 1, 2005, and who has not made an election to
10 participate in the system prospectively on the basis of an
11 employee who becomes a member on or after October 1, 2005, and
12 has been credited with 20 or more years of creditable service
13 should die, his surviving spouse, as hereinafter defined,
14 shall be entitled to a death benefit, provided the spouse is
15 the designated beneficiary.

16 "(b) If any active member, who last became a member
17 on or after October 1, 2005, or, who has made an election to
18 participate in the system prospectively, on the basis of an
19 employee who becomes a member on or after October 1, 2005, and
20 has been credited with 25 or more years of creditable service
21 should die, his surviving spouse, as hereinafter defined,
22 shall be entitled to a death benefit, provided the spouse is
23 the designated beneficiary.

"(c) Surviving Spouse as used in this subsection shall mean the legally married spouse of the member on the date of his death.

"(d) No death benefit shall be payable if the deceased member is not survived by a spouse or the surviving spouse is not the designated beneficiary.

"(e) Such death benefit shall be a monthly income, payable for the life of the surviving spouse equal to the allowance that would have been payable to the member's surviving spouse if he had retired on the day immediately preceding his death, selected the 50% survivorship option, and designated his surviving spouse as beneficiary.

"(f) Notwithstanding the above, and in lieu of the above, the surviving spouse may elect to receive a lump sum payment equal to the member's contributions at the date of his death.

"(2) Disability Retirement Allowance

"(a) Any member in service who has had 5 years or more of creditable service may be retired for disability upon application of such member to the board and upon recommendation of the head of the division in which the member is employed, provided he meets the following requirements:

"(i) The Medical Board after medical examination of such member shall certify that he is mentally or physically incapacitated for the further performance of duty; that such

1 incapacity is likely to be permanent; and that the member
2 should be retired for physical or mental disability.

3 "(ii) The disability did not result from service in
4 the armed forces of the United States, chronic alcoholism,
5 addiction to narcotics, intentionally self-inflicted injuries,
6 or injuries received while committing a felony.

7 "(iii) Except for temporary and/or partial
8 disability workers' compensation benefits, medical payments
9 and educational or training benefits, he is not receiving and
10 has not received any payments for such disability from the
11 city under workers' compensation or any other type of
12 employer-provided payment for disability payable from the
13 participating employer's general or self-insured funds;
14 provided, however, that in the event such employee is entitled
15 to any other such benefits from the city or any of its boards
16 he may elect by filing with the board up to the time of the
17 commencement of such benefits, his choice of the two benefits.
18 In the event he chooses not to accept benefits under the
19 system he shall withdraw his accumulated contributions in a
20 lump sum.

21 "(b) The disability retirement allowance shall be
22 computed as a service retirement allowance on the basis of his
23 average final compensation and creditable service at
24 disability retirement.

1 "(c) Should a member with 5 or more years of
2 creditable service become disabled under circumstances which
3 fail to meet the requirements set forth in (i), (ii), and
4 (iii) of subsection (2) (a) above, he may elect in lieu of a
5 return of his accumulated contributions as provided under
6 subsection (4) (a) of this section, to receive a deferred
7 retirement allowance commencing at such time as he would be
8 eligible to receive a service retirement allowance.

9 "(d) No member shall be entitled to a disability
10 retirement allowance unless he meets the requirements of (i),
11 (ii), and (iii) of subsection 2, regardless of whether such
12 member is eligible for benefits for total (100%) disability
13 under the federal system guidelines.

14 "(3) Vesting Retirement Allowance

15 "(a) Should any member be or have been involuntarily
16 separated from service for any cause other than fault or
17 delinquency on his part after having completed ten or more
18 years of creditable service, he may elect in lieu of a return
19 of his accumulated contributions as provided under subsection
20 (4) (a) of this section, to receive a deferred retirement
21 allowance commencing twenty years from the beginning of
22 creditable service with the city or age 50, whichever occurs
23 first. Failure of reelection of a member elected by vote of
24 the people shall not be construed as fault or delinquency on
25 the part of such member.

1 "(b) Anything herein to the contrary
2 notwithstanding, any member separating from service after
3 having completed ten or more years of creditable service, may
4 elect in lieu of a return of his accumulated contributions as
5 provided under subsection 4(a) of Section 6, to receive a
6 deferred retirement allowance commencing as follows:

7 "(i) For a member in Group I, I-A, or III who
8 becomes a member prior to October 1, 2005, and does not elect
9 to participate prospectively as if he became a member on or
10 after October 1, 2005, at the age of 65.

11 "(ii) For a member in Group II who becomes a member
12 prior to October 1, 2005, and does not elect to participate
13 prospectively as if he became a member on or after October 1,
14 2005, at the age of 62. .

15 "(iii) For a member in Group I, I-A, or III who
16 becomes a member on or after October 1, 2005, or who elects to
17 participate prospectively as if he became a member on or after
18 October 1, 2005, at the age of 62.

19 "(iv) For a member in Group II who becomes a member
20 on or after October 1, 2005, or who elects to participate
21 prospectively as if he became a member on or after October 1,
22 2005, at the age of 55.

23 "Any member who separates from service without
24 completing ten years of creditable service or qualifying for a
25 disability retirement allowance shall not receive any vesting

1 retirement allowance and shall only be entitled to receive the
2 amount of his accumulated contributions under the provisions
3 of subsection (4)(b) of Section 6.

4 "(c) The vesting retirement allowance shall be
5 computed as a service retirement allowance on the basis of the
6 members' average final compensation and creditable service at
7 the time of separation from service.

8 "(d) Notwithstanding the foregoing the member may at
9 any time prior to the commencement of his vesting retirement
10 allowance revoke such election and receive in lieu of all
11 benefits the amount of his accumulated contributions. In the
12 event of the death prior to the commencement of the vesting
13 retirement allowance of a member who has made the election
14 provided for herein, the amount of his accumulated
15 contributions shall be paid under the provisions of subsection
16 (4)(b) of this section in lieu of any other benefit provided
17 for in this section.

18 "(4) Return of Contributions

19 "(a) Should a member cease to be an employee for any
20 reason and not be awarded a retirement allowance, he shall be
21 paid on demand his accumulated contributions.

22 "(b) Upon the receipt of proof, satisfactory to the
23 board, of the death of a member and that such member's
24 beneficiary is not eligible for a spousal benefit under
25 Section 6 subsection (1.1), his accumulated contributions

1 shall be paid to such person, if any, as he shall have
2 nominated by written designation duly acknowledged and filed
3 with the board if such person survives him, otherwise to the
4 estate of the member.

5 "(5) Re-Examination of Beneficiaries Retired on
6 Account of Disability.

7 "(a) The board may at any time and as often as it
8 sees fit, not in excess of once in each 12 months, require any
9 beneficiary receiving a retirement allowance due to a
10 disability to undergo a medical examination if he has not yet
11 attained his minimum service retirement age, such examination
12 to be made at the place of residence of such beneficiary, the
13 office of a physician selected by the board, or other place
14 mutually agreed upon. Should such beneficiary refuse to submit
15 to such medical examination his retirement allowance may be
16 discontinued by the board until his withdrawal of such
17 refusal, and should his refusal continue for over one year,
18 all his rights in and to that portion of his retirement
19 allowance which is provided by the contributions of the city
20 may be revoked by the board.

21 "(b) In the event a member who is receiving a
22 retirement allowance due to a disability secures gainful
23 employment, including employment with the city, paying more
24 than the difference between his retirement allowance and his
25 average final compensation, the amount of his retirement

1 allowance shall be reduced to an amount which, together with
2 the amount earnable by him, shall equal the amount of his
3 average final compensation but, in no event, to an amount less
4 than the portion of his allowance provided by his accumulated
5 contributions. Should his earning capacity be later changed,
6 the amount of his retirement allowance may be further modified
7 in like manner. Any member receiving a retirement allowance
8 due to a disability shall advise the board of any gainful
9 employment. The board may make such investigation at any time
10 in reference to any gainful employment of any retired member,
11 up to the time he attains his minimum service retirement age,
12 and such member shall answer any question and furnish
13 information, including copies of federal income tax returns,
14 as the board may require. In the event that the member fails
15 or refuses to comply with the board's request, then his
16 retirement allowance may be discontinued by the board until
17 his withdrawal of such refusal, and should his refusal
18 continue for over one year, all his rights in and to that
19 portion of his retirement allowance which is provided by the
20 contributions of the city may be revoked by the board.

21 "(6) Restoration of Beneficiaries to Membership

22 "Should a member receiving a retirement allowance
23 due to a disability be restored to or be in service at a
24 compensation equal to or greater than his average final
25 compensation at retirement, or should any other beneficiary be

1 restored to service, his retirement allowance shall cease, any
2 election of an optional benefit shall become void, he shall
3 again become a member of the system and shall contribute
4 thereafter at the then prevailing rate. An amount equal to the
5 actuarial reserve held for the part of his retirement
6 allowance provided by his contributions shall be credited to
7 him as accumulated contributions. Any creditable service to
8 which he was entitled when he retired shall be restored to
9 him, and upon subsequent retirement his retirement allowance
10 shall be based on his compensation and creditable service
11 before and after the period of prior retirement; provided that
12 if he does not complete three years of creditable service
13 after his restoration to service, the part of his retirement
14 allowance upon subsequent retirement payable with respect to
15 creditable service rendered before the period of his previous
16 retirement shall be equal to his previous retirement allowance
17 with all of the provisions of any option restored, if one was
18 elected, with respect to such part of his retirement
19 allowance.

20 "(7) Optional Allowances

21 "Until the date of his retirement and, in the case
22 of a member eligible for a vesting retirement allowance, the
23 date as of which such allowance is to commence, any member may
24 elect to convert the retirement allowance otherwise payable to
25 him into a modified retirement allowance of equivalent

1 actuarial value in accordance with one of the optional forms
2 named below. Such election shall become effective on the
3 member's retirement date or the date as of which his vesting
4 retirement allowance is to commence, as the case may be.

5 "Option 1. A reduced retirement allowance payable
6 during the life of the retired member, with the provision that
7 if he dies before he has received in payments of his allowance
8 the amount of his accumulated contributions at the time of his
9 retirement, the balance of such amount shall be paid to such
10 person, if any, as he shall have nominated by written
11 designation duly acknowledged and filed with the board if such
12 person survives him, otherwise to the retired member's estate;
13 or

14 "Option 2. A reduced retirement allowance payable
15 during the life of the retired member, with the provision that
16 upon his death his reduced retirement allowance shall be
17 continued throughout the life of and paid to such person as he
18 shall have nominated by written designation duly acknowledged
19 and filed with the board at the time of retirement; or

20 "Option 3. A reduced retirement allowance payable
21 during the life of the retired member, with the provision that
22 upon his death one-half of his reduced retirement allowance
23 shall be continued throughout the life of and paid to such
24 person as he shall have nominated by written designation duly

acknowledged and filed with the board at the time of
retirement; or

"Option 4. A reduced retirement allowance payable
during the life of the retired member, with the provision that
upon his death some other benefit shall be payable, provided
that the total value of the allowance during his life and the
succeeding benefit shall be computed to be of equivalent
actuarial value to the retirement allowance which he would
receive without optional modification and provided that the
benefit shall be approved by the board.

"(7.1) Anything herein to the contrary
notwithstanding, a member may elect to convert the retirement
allowance otherwise payable to him into a modified retirement
allowance of equivalent actuarial value in accordance with one
of the optional forms named in subsection 7 of Section 6 of
this act.

"Whenever any member has elected an optional
allowance and has nominated his spouse to receive all amounts
and benefits payable on or after such member's death as a
result of such election, the member may revoke the election
any time after the death of such spouse or the entry of a
final judgement and complete divorce from the spouse so
nominated. Upon any such revocation the member shall return to
the single lifetime only retirement allowance otherwise
payable to him. Such revocation shall be effective on the

1 first day of the month following the month in which the
2 revocation is filed with the board and once filed shall be
3 final and irrevocable. Beneficiary elections and changes to
4 such election, if allowed by the board, shall be made in
5 accordance with the policies and procedures established by the
6 board.

7 "(8) Preservation of Benefits Accrued Under the
8 System Prior Hereto

9 "Anything herein contained to the contrary
10 notwithstanding, the retirement allowance payable under the
11 system to a member immediately prior to the effective date of
12 this act, who continued without a break in membership to his
13 retirement date or termination of employment entitling him to
14 a benefit hereunder, shall not be less than the benefit which
15 would otherwise be payable to him under the system as in
16 effect prior to the effective date of this act, based on his
17 creditable service to and his compensation earned prior to
18 paid date.

19 "(9) The payment of benefits shall begin not later
20 than the 60th day after the close of the calender year in
21 which the latest of the following events occur: (a) the date
22 on which the former employee attains the earlier age of 65 or
23 his minimum service retirement age specified in the act; (b)
24 the 10th anniversary of the year in which the employee or
25 former employee became a member of the system, or (c) the date

1 the member employee's employment with the city is terminated.
 2 All distributions will be determined and made in accordance
 3 with Section 401(a)(9) of the Internal Revenue Code.

4 "(10) The maximum amount payable to a member under
 5 the system in any calender year when expressed as a straight
 6 life annuity commencing at normal retirement age shall be
 7 \$160,000.00. The dollar limitations shall be adjusted annually
 8 as provided in Section 415(d) of the Internal Revenue Code
 9 pursuant to the regulations, effective as of January 1 of each
 10 calender year. The limitations, adjustments, definitions,
 11 special rules, and other requirements prescribed by this act
 12 shall at all times comply with the provisions of Section 415
 13 of the Internal Revenue Code and the regulations thereunder as
 14 applicable to government plans, the terms of which are
 15 specifically incorporated herein by reference.

16 "Section 7. Method of Financing.

17 "All of the assets of the system shall be credited,
 18 according to the purpose for which they are held, among three
 19 accounts, namely, the Members' Account, the Accumulation
 20 Account and the Expenses Account.

21 "(1) Members' Account.

22 "(a) The Members' Account shall be the account in
 23 which shall be held the accumulated contributions of members.

24 "(b) The board shall cause to be deducted from the
 25 compensation of each member on each and every payroll for each

1 and every payroll period 6% of his earnable compensation. In
2 determining the amount earnable by a member in a payroll
3 period, the board may consider the rate of compensation
4 payable to such member on the first day of a payroll period as
5 continuing throughout the payroll period, and it may omit
6 deduction from compensation of any period less than a full
7 payroll period.

8 "(c) The deductions provided for herein shall be
9 made notwithstanding that the minimum compensation provided by
10 law for any member shall be reduced thereby. Every member
11 shall be deemed to consent and agree to the deductions made
12 and provided for herein and shall receipt for his full salary
13 or compensation, and payment of salary or compensation less
14 said deduction shall be a full and complete discharge and
15 acquittance of all claims and demands whatsoever for the
16 services rendered by such person during the period covered by
17 such payment, except as to the benefits provided under this
18 act.

19 "(d) The proper authority or officer responsible for
20 making up the payroll shall certify to the board the amounts
21 deducted on each and every payroll, and each of such amounts
22 shall be paid into the Members' Account and credited to the
23 individual account of the member from whose compensation the
24 deduction was made.

"(e) The accumulated contributions of a member paid upon his death or withdrawn by him, as provided in this act, shall be paid from the Members' Account. Upon the retirement of a member, his accumulated contributions shall be transferred from the Members' Account to the Accumulation Account.

"(2) Accumulation Account.

"(a) The Accumulation Account shall be the account in which shall be accumulated all contributions made by the city to provide benefits under the system and from which shall be paid all retirement allowances and other benefits under the system, other than those payable from the Members' Account.

"Regular Contributions by the City

"(b) On account of each member there shall be paid annually into the Accumulation Account a certain percentage of the compensation of each member to be known as the normal contribution, and an additional percentage of his compensation to be known as the accrued liability contribution. The rates per centum of such contribution shall be fixed on the basis of the liabilities of the system as shown by actuarial valuation.

"(c) The normal rates of contribution shall be determined after each actuarial valuation. During the period over which the accrued liability contributions are payable, the normal rates of contribution shall be determined, on the basis of regular interest and the tables last adopted by the

1 board, as the uniform and constant percentages of the
2 compensation of the average new entrant Group I, Group I-A,
3 and Group III or Group II member, as the case may be, which,
4 if contributed on the basis of the prospective compensation of
5 such new entrant throughout his entire period of active
6 service, would be sufficient to provide for the payment of the
7 portion of any retirement allowance or other benefit payable
8 on his account not provided by his own contributions. After
9 the accrued liability contributions have ceased to be payable,
10 the normal contribution rate shall be the rate per centum of
11 the compensation of all members obtained by deducting from the
12 total liabilities of the Accumulation Account the amount of
13 the funds in hand standing to the credit of the Accumulation
14 Account, and dividing the remainder by one per centum of the
15 present value of the future compensations of all members, as
16 computed at regular interest on the basis of the tables last
17 adopted by the board.

18 "(d) The accrued liability contribution rates shall
19 be computed as the rate per centum of the total annual
20 compensation of all Group I, Group I-A, and Group III members,
21 or Group II members, as the case may be, which is equivalent
22 to 4 3/4% of the amount of the total liabilities of the
23 Accumulation Account on account of such members and their
24 beneficiaries in excess of the funds in hand held on their
25 account in the Accumulation Account, which is not

1 dischargeable by the aforesaid normal contributions made on
2 account of such members during the remainder of their active
3 service.

4 "(e) The total amount payable by the city in each
5 year to the Accumulation Account shall be not less than the
6 sum of the rates per centum known as the normal contribution
7 rate and the accrued liability contribution rate, of the total
8 compensation of all members in Group I, I-A, and III and in
9 Group II, respectively, during the preceding year; provided,
10 however, that the amount of each annual accrued liability
11 contribution shall be at least 3% greater than the preceding
12 annual accrued liability contributions, and that the aggregate
13 payment shall be sufficient, when combined with the amount in
14 the account, to provide the retirement allowances and other
15 benefits payable to members and beneficiaries during the year
16 then current.

17 "(f) The accrued liability contributions shall be
18 discontinued as soon as the amount of the funds standing to
19 the credit of the Accumulation Account shall equal the present
20 value, as actuarially computed and approved by the board, of
21 the total liabilities of the account on account of all members
22 and beneficiaries less the present value of the normal
23 contributions to be received at the normal rates then in force
24 on account of persons who are at that time members.

25 "Interest

1 "(g) All interest and dividends earned on the funds
2 of the system shall be credited to the Accumulation Account.

3 "(h) Regular interest shall mean interest at the per
4 centum rate or rates compounded annually as shall be
5 determined by the board from time to time.

6 "Benefits payable from Accumulation Account

7 "(i) All retirement allowances to beneficiaries, and
8 benefits in lieu thereof, shall be paid from the Accumulation
9 Account.

10 "(3) Expense Account

11 "The Expense Account shall be the account from which
12 shall be paid all the expenses necessary in connection with
13 the administration and operation of the system. Persons
14 assigned to and working for the Retirement System shall be
15 employees of the City of Montgomery, and their salaries and
16 other accrued benefits for such employees shall be paid
17 proportionately by the City of Montgomery, the City of
18 Montgomery Airport Authority, and the Montgomery Water Works &
19 Sanitary Sewer Board, based upon each organization's relative
20 percentage of covered member payroll. All other expenses and
21 costs incurred in connection with the administration and
22 operation of the retirement system, including, but not limited
23 to, the fees and costs paid to the retirement system's
24 investment trustees and advisors, shall be the sole

1 responsibility of, and shall be paid by, the retirement system
2 itself from its investment income.

3 "(4) Appropriations

4 "On or before the first day of June of each year the
5 board shall file with the council its certification of the
6 amount of the appropriation necessary to pay the normal and
7 accrued liability contributions to the retirement fund for the
8 ensuing year, and the amount of appropriation required to
9 cover the expenses necessary in connection with the
10 administration and operation of the system, and such amounts
11 shall be included in the budget, in accordance with legal
12 budget procedure.

13 "(5) Member Contributions

14 "(a) Contributions which the board causes pursuant
15 to Section 7(1) to be deducted from the compensation of each
16 member employee and contributed to the member's account under
17 the act shall be treated for purposes of Section 414(h)(2) of
18 the Internal Revenue Code as being paid by the city in lieu of
19 contributions by any such member employee.

20 "(b) The member employee contributions which are
21 picked up will continue to be designated employee compensation
22 for determining the amount of the contribution to be so picked
23 up; the total amount of the contribution of each member
24 employee to the Employees' Retirement System of the City of
25 Montgomery shall not be reduced by this section; the amount of

1 the retirement allowance of each member shall not be affected
 2 by this section, no other changes in the method of computation
 3 and transmittal of these picked up employee contributions
 4 shall be affected by this section; and the total amount paid
 5 to and on behalf of each member employee will not be increased
 6 or decreased by this section.

7 "(c) The procedure whereby the member employees
 8 contribution to the Employees' Retirement System of the City
 9 of Montgomery is picked up shall apply equally to each and
 10 every such employee who participates in the Employees'
 11 Retirement System of the City of Montgomery; no employee shall
 12 be given any option concerning this pick up; and this
 13 procedure of pick up shall be mandatory on all member
 14 employees.

15 "(d) Forfeitures, if any, arising from severance of
 16 employment, death, or for any other reason, may not be used to
 17 increase benefits for employee members or their beneficiaries
 18 who would otherwise receive under the Employees' Retirement
 19 System of the City of Montgomery at any time prior to
 20 termination of the Employees' Retirement System of the City of
 21 Montgomery or the complete discontinuance of city
 22 contributions. Forfeitures, if any, are to be used as soon as
 23 possible to reduce subsequent city contributions.

24 "Section 8. Management of Funds.

1 "(1) Investments shall be managed by the investment
2 trustee. The board shall otherwise manage the system.

3 "(2) The board shall designate one of its members,
4 with an appropriate bond, or a bank or trust company, to be
5 the custodian of the funds of the system other than those in
6 the possession of the investment trustee. All payments from
7 such funds of the system shall be made only upon regular
8 vouchers signed by two persons designated by the board, each
9 of whom shall be bonded. A duly attested copy of a resolution
10 of the board designating such persons and bearing upon its
11 face specimen signatures of such persons shall be filed with
12 the custodian as his authority for making payments upon such
13 vouchers. No voucher shall be drawn unless it shall have been
14 previously authorized by resolution of the board. All persons
15 authorized to sign such vouchers shall be bonded in an amount
16 or amounts established by the board from time to time and
17 commensurate with the applicable fiscal responsibilities and
18 risks.

19 "(3) For the purpose of meeting disbursements for
20 retirement allowances and other payments there shall be kept
21 on deposit available cash in an amount to be determined from
22 time to time by the board. The board shall notify the
23 investment trustee in writing of the amount determined by the
24 board to be desirable. No voucher shall be drawn unless it

1 shall have been previously authorized by resolution of the
2 board.

3 "(4) Except as otherwise herein provided, no member
4 nor employee of the board, the City of Montgomery Airport
5 Authority, the Montgomery Water Works & Sanitary Sewer Board,
6 or of the City of Montgomery, shall have any direct or
7 indirect interest in the gains or profits of any investment
8 made by the board or the investment trustee, nor as a member
9 of the board receive any pay or emolument for his services. No
10 member nor employee of the board shall, directly or
11 indirectly, for himself or as an agent in any manner use the
12 same, except to make such current and necessary payments as
13 are authorized by the board.

14 "(5) The board shall cause the accounts and
15 operations of the retirement system to be audited by an
16 independent outside auditor annually, and, an audit of its
17 management practices and procedures every three years, or more
18 often if necessary to maintain security and efficiency.

19 "Section 9. Member To Elect Between Service
20 Retirement and Other City Payments

21 "Anything in this act to the contrary
22 notwithstanding, any person who is entitled to receive
23 benefits directly from the city or from the funds of the city
24 or from any board or commission connected with the city, for
25 any disability, shall elect on forms, and in accordance with

1 rules and regulations, adopted by the board between those
2 benefits and the service retirement benefits under this
3 system. In the event such person does not elect to receive a
4 service retirement benefit, then he shall receive no service
5 retirement benefits but shall be entitled to a return of his
6 accumulated contributions.

7 "Section 10. Return of Contributions

8 "Wherever in this act provision is made for return
9 of contributions of a member, such return shall be made
10 without payment of interest for the period subsequent to
11 December 31, 1968 or the return of interest paid by such
12 member when purchasing past service.

13 "Section 11. Assignments Prohibited

14 "The property and funds of the system, the
15 contributions of members deducted from their compensation, the
16 right of a person to a retirement allowance or other benefit,
17 and any other right accrued or accruing to any person under
18 the provisions of this act and the moneys in the accounts
19 created by this act shall not be subject to taxation by the
20 city nor by the State of Alabama, nor be subject to execution,
21 garnishment, attachment, the operation of bankruptcy or
22 insolvency law or any other process of law whatsoever to
23 satisfy any debt or liability of any member, and shall be
24 unassignable except as in this act specifically provided.

25 "Section 12. Protection Against Fraud

1 "Whoever with intent to deceive shall make any
2 statements or reports required under this act which are
3 untrue, or shall falsify or permit to be falsified any record
4 or records of this system shall be fined not to exceed one
5 thousand dollars, or imprisoned not to exceed six months, or
6 both.

7 "Section 13. Errors

8 "Should any change or error in the records result in
9 any member or beneficiary receiving from the system more or
10 less than he would have been entitled to receive had the
11 records been correct, the board shall have the power to
12 correct such error, and as far as practicable, to adjust the
13 payments in such manner that benefits of equivalent actuarial
14 value to the benefit to which such member or beneficiary was
15 correctly entitled shall be paid.

16 "Section 14. General Conditions

17 "(1) The board shall have the continuing right and
18 power to amend or supplement this act at any time, which right
19 and power is hereby expressly reserved, but no amendment shall
20 be adopted which will reduce the then accrued benefits of
21 employees or beneficiaries below the extent they are then
22 covered by accumulated reserves, which reserves shall
23 constitute a trust fund for the payment of such benefits,
24 except that any amendment or supplement which would result in
25 additional contributions by the City shall be approved by the

board, the City Council, and the governing body of such participating employer. At least every two years, the board will review the retirement allowances being paid to beneficiaries and make a determination as to whether or not to recommend a cost-of-living adjustment to the Mayor and the City Council.

"(2) All provisions of any act inconsistent with the provisions of this act are hereby repealed to the extent of such inconsistency.

"(3) If any section or part of any section of this act is declared to be unconstitutional, the remainder of the act shall not thereby be invalidated.

"(4) No amendment or supplement to the Plan shall be effective if it authorizes or permits any part of the Trust Fund, other than such part as is required to pay administrative expenses and taxes if any, to be used for or diverted to any purpose other than for the exclusive benefit of member employees or their beneficiaries or estates, or causes any reduction in the then accrued benefits of member employees of their beneficiaries below the extent they are then covered by accumulated reserves."

Section 2. This act shall become effective October 1, 2005, following its passage and approval by the Governor, or its otherwise becoming law.

Lucy Baxley

President and Presiding Officer of the Senate

McDowell Lee

Speaker of the House of Representatives

SB55

Senate 21-JUL-05

I hereby certify that the within Act originated in and passed the Senate.

McDowell Lee
Secretary

House of Representatives
Passed: 26-JUL-05

By: Senator Dixon

APPROVED 07/28/05

TIME 3:47 p.m.

Bob Riley
GOVERNOR

Alabama Secretary Of State

Act Num....: 2005-290
Bill Num....: S-55

Recv'd 07/29/05 11:26amSXH